IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 1 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CONTROLLER OF ESTATE DUTY

Versus

LATE PRAHLADBHAI PRABHUDAS BY A/P RAJNIKANT P PATEL

Appearance:

1. ESTATE DUTY REFERENCE No. 1 of 1986
MR BB NAIK for MR RP BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 26/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has referred to this court for its opinion the following questions of law under the provisions of sec. 64 of the Estate Duty Act, 1953 (hereinafter referred to as 'the Act') :

1. Whether the Tribunal has erred in law and on facts in directing to apply Rule 1-D of Wealth-tax Rules, 1957 for valuation of unquoted shares for the purpose of value of the said shares under the Estate Duty Act, 1953?

2. Whether, on the facts and circumstances of the case the Tribunal was justified in law in holding that the provisions of explanation 2 of section 2(15) were not attracted in this case in regard to release by the deceased and accordingly, deleting the inclusion of the sum of Rs. 1,07,000/- as share of the deceased in H.U.F. property?

2. We have heard learned advocate Shri B.B. Naik appearing for the revenue. Nobody has appeared for the respondent-assessee though the respondent assessee has been served with a notice of this court.

3. So far as the first question is concerned, it has been submitted by learned advocate Shri Naik that the said question has been now duly answered by this court in the case of Shyamsukh Garg v. Controller of Estate Duty, M.P. 145 ITR 238. Looking to the law laid down in the said judgment, we answer the question in the negative i.e. in favour of the assessee and against the revenue.

4. So far as the second question is concerned, upon perusal of the order passed by the Tribunal, it is clear that the Tribunal had relied upon the judgment delivered in the case of Controller of Estate Duty, Gujarat v. Babubhai T. Panchal, 133 ITR 455. During the pendency of the reference, the judgment delivered in the case of Babubhai T. Panchal (supra) has been overruled in the case of Late Manigauri T. Panchal v. Controller of Estate Duty, 196 ITR 517.

5. In view of the judgment delivered in the case of we answer the question in the negative i.e. in favour of the revenue and against the assessee.

The reference thus stands disposed of accordingly

with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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